

February 28, 1961

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ARIZONA ATTORNEY GENERAL

Mr. Joe Sotelo
Director of Securities
Arizona Corporation Commission
Capitol Annex
Phoenix, Arizona

Dear Mr. Sotelo:

I am in receipt of your letter dated February 3, 1961, in which you request an opinion regarding the sale of securities by a Massachusetts Business Trust. Your question is set forth as follows:

"This Division would like to know the opinion of the Attorney General with respect to the legality of the sale of the above described shares of beneficial interest in Arizona, in view of the provisions of Section 1, Article 14, of the Arizona Constitution and the case law as stated in Reilly v. Clyne, 27 Arizona 432, 234 P 35, and Rubins v. Costello, 75 Arizona 5, 251 p2d 306, and any other applicable Arizona law."

The applicable constitutional and statutory provisions are as follows:

Art. 14, Sec. 1

"§1. 'Corporation' defined; right to sue and suability

Section 1. The term 'corporation,' as used in this Article, shall be construed to include all associations and joint stock companies having any powers or privileges of corporations not possessed by individuals or co-partnerships, and all corporations shall have the right to sue and shall be subject to be sued, in all courts, in like cases as natural persons."

A.R.S. §10-101

"§10-101. Corporation defined

The term 'corporation' as used in this chapter, shall include all associations and joint stock companies having powers or privileges of corporations not possessed by individuals or partnerships."

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The cases of Reilly v. Clyne, 27 Ariz. 432, and Rubens v. Costello, 75 Ariz. 5, held that a trust attempting to exercise powers or privileges of corporations not possessed by individuals or copartnerships must qualify as a corporation under the general corporation statutes of the State of Arizona and that failure to do so voided any security or other evidence of interest issued by the trust. Therefore, a foreign business trust coming within the constitutional and statutory definition of a corporation which is doing business within the State of Arizona must comply with the Arizona statutes concerning foreign corporations. Failure by the corporation to so comply could result in the voiding of any security or other evidence of interest issued by the trust.

Of course, the question will arise as to whether or not the foreign corporation is doing business within the state. Where a corporation is engaged as a dealer in selling its own securities within the state it is doing business in the state. 20 C.J.S. Corporations, §1838; Mazzaleni v. Trans-america Corp., 169 A. 127, 313 Pa. 317. Requiring compliance with the general corporation law carries out the purpose of the securities statutes in protecting the public.

We trust this will assist you in your problem.

Very truly yours,

ROBERT W. PICKRELL
The Attorney General

ALVIN LARSON
Assistant Attorney General

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